

Joden Stores, Inc., d/b/a Tropicana Foods and Joden Stores, Inc. d/b/a Tropicana Foods, Debtor in Possession and United Food & Commercial Workers Union, Local 839, United Food and Commercial Workers International Union, AFL-CIO. Case 32-CA-12512

February 18, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed May 11, 1992,¹ by United Food & Commercial Workers Union, Local 839, United Food and Commercial Workers International Union, AFL-CIO, the General Counsel of the National Labor Relations Board issued a complaint June 24 against Joden Stores, Inc., d/b/a Tropicana Foods, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act. On October 30, the General Counsel issued an amended complaint containing the same allegations against Joden Stores, Inc., d/b/a Tropicana Foods, and Joden Stores, Inc. d/b/a Tropicana Foods, Debtor in Possession, collectively referred to as the Respondent.² By letter dated November 12, the Respondent filed an answer, admitting all the factual allegations in the amended complaint, but denying that it committed any unfair labor practices.

On December 15, the General Counsel filed a motion to transfer the proceeding to the Board and a Motion for Summary Judgment. On December 23, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent's answer admits the operative facts giving rise to the unfair labor practices alleged in the amended complaint. The Respondent's answer denies the conclusionary unfair labor practice allegations of the amended complaint without explanation. Because

the operative facts are admitted, we find that the Respondent's bare, one-word denial is insufficient to refute the allegations of violations and that no material factual issues have been raised. Accordingly, we find all the allegations of the amended complaint to be true, and we grant the General Counsel's unopposed Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation, with an office and place of business in Watsonville, California, is engaged in the operation of a retail grocery store. During the 12 months preceding the issuance of the amended complaint, in the course and conduct of its business operations, the Respondent derived gross revenues in excess of \$500,000, and purchased and received goods or services valued in excess of \$5000 which originated outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that United Food & Commercial Workers Union, Local 839, United Food and Commercial Workers International Union, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

The bargaining unit described below constitutes a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by Respondent at its stores located in Monterey, Santa Cruz and San Benito Counties, California; excluding all office clerical employees, meat department employees, guards and supervisors as defined in the Act.

Since about 1982, and at all times material here, the Union has been the designated exclusive collective-bargaining representative of the employees in the bargaining unit described above, and since that date, the Union has been so recognized by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period May 1, 1989, to April 30, 1992 (the Agreement).

At all times since 1982, the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

¹ All dates are in 1992 unless otherwise indicated.

² On May 11, 1992, Joden Stores, Inc., d/b/a Tropicana Foods, filed a petition for reorganization under chapter 11 of the Bankruptcy Act in the United States Bankruptcy Court in San Jose, California. The court duly designated Joden Stores, Inc. d/b/a Tropicana Food, Debtor in Possession as the debtor-in-possession with full authority to continue operations and exercise all powers necessary to the administration of the business of Joden Stores, Inc., d/b/a Tropicana Foods. The purpose of the amended complaint was to allege the Respondent's current status as debtor-in-possession. The Respondent's answer admits that the debtor-in-possession is the successor in bankruptcy to, and the same entity as, Joden Stores, Inc., d/b/a Tropicana Foods.

B. The Violations

On about April 27, the Respondent's president, Gerald Dekay, transmitted by letter to the Union the Respondent's proposal for a successor agreement to the Agreement (the Proposal). On about May 7, the Union requested that the Respondent furnish it with certain detailed financial records that would support the Respondent's assertions that it needed financial relief and could not afford to pay wages in excess of those in the Proposal. The requested information is necessary and relevant for the purposes of collective bargaining.

On about May 10, the Respondent implemented the Proposal, without reasonable prior notice to the Union, and without having bargained in good faith to lawful impasse with the Union concerning the terms of the Proposal. Further, the Respondent had not yet furnished the Union with the requested information, and only one preliminary bargaining session had been held concerning the Proposal. Accordingly, we find that by failing to provide the Union with the requested information, and by unilaterally implementing the terms of the Proposal, the Respondent violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By failing to furnish the Union with requested financial information necessary and relevant for collective-bargaining purposes, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

2. By unilaterally implementing the terms of its Proposal about May 10, 1992, at a time when no lawful impasse in negotiations existed, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to furnish the Union, on request, with the financial information requested May 7, 1992. We shall order the Respondent to bargain on request with the Union and make whole unit employees for any loss of earnings and benefits they may have sustained, including fringe benefit fund contributions, as a result of the unilateral changes implemented by the Respondent on May 10, 1992. Any payments to employees will be determined in accordance with the method described in *Ogle Protection Service*, 183 NLRB 682 (1970), and *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940

(9th Cir. 1981), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).³

ORDER

The National Labor Relations Board orders that the Respondent, Joden Stores, Inc., d/b/a Tropicana Foods and Joden Stores, Inc. d/b/a Tropicana Foods, Debtor in Possession, Watsonville, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with United Food & Commercial Workers Union, Local 839, United Food and Commercial Workers International Union, AFL-CIO, by refusing to furnish the Union with requested necessary and relevant financial information.

(b) Unilaterally implementing the terms of its bargaining proposal without first bargaining with the Union to agreement or without having reached a bona fide impasse in negotiations.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish the Union with the financial information requested about May 7, 1992.

(b) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All employees employed by Respondent at its stores located in Monterey, Santa Cruz and San Benito Counties, California; excluding all office clerical employees, meat department employees, guards and supervisors as defined in the Act.

(c) Honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement that expired by its terms on April 30, 1992, until the Respondent and the Union agree otherwise or reach a bargaining impasse.

(d) Make whole all unit employees for any loss of earnings and other benefits suffered as a result of the unlawful unilateral changes, with interest in the manner described in the remedy section of this decision.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

³ We leave to the compliance stage the question whether the Respondent must pay any additional sums into employees benefit funds to satisfy our "make-whole" remedy. *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

(f) Post at its Watsonville, California facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain in good faith with United Food & Commercial Workers Union, Local

839, United Food and Commercial Workers International Union, AFL-CIO, by refusing to furnish requested financial information necessary and relevant to the Union's performance of its collective-bargaining duties.

WE WILL NOT unilaterally implement the terms of our bargaining proposals without first bargaining with the Union to agreement or to impasse about those proposals.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union with the financial information it requested on about May 7, 1992.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All employees employed by Respondent at its stores located in Monterey, Santa Cruz and San Benito Counties, California; excluding all office clerical employees, meat department employees, guards and supervisors as defined in the Act.

WE WILL honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement that expired by its terms on April 30, 1992, until we reach a bargaining impasse or agree otherwise with the Union.

WE WILL make whole all our employees represented by the Union for any loss of earnings and other benefits resulting from the unilateral changes we made on May 10, 1992, with interest.

JODEN STORES, INC., D/B/A TROPICANA
FOODS AND JODEN STORES, INC. D/B/A
TROPICANA FOODS, DEBTOR IN POSSESSION